



POLICE DEPARTMENT CITY OF NEW YORK

March 7, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michael Romanello
Tax Registry No. 952185
46th Precinct
Disciplinary Case No. 2014-11760

Charges and Specifications:

1. Said Police Officer Michael Romanello, on or about February 22, 2013, at approximately 0129 hours, while assigned to the 46th Precinct and on duty, inside of the 43rd Precinct stationhouse, Bronx County, abused his authority as a member of the New York City Police Department, in that he failed to obtain medical treatment for Radames Clavell.
P.G. 210-04, Page 2, Paragraph 5 - MEDICAL TREATMENT OF PRISONER

Appearances:

For CCRB-APU: Jonathan Fogel, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, New York 10038

Hearing Dates:

November 20 and December 15, 2015

Decision:

Not Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 20 and December 15, 2015. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Radames Clavell and Sergeant Gerardo DeCaro as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is not in dispute in this case that Respondent stopped Radames Clavell in the early morning hours of February 22, 2013. Respondent had observed Clavell operating a vehicle on Westchester Avenue in the Bronx and further observed that the vehicle had a loud engine exhaust. After requesting Clavell's license and registration, Respondent conducted a computer check and learned that Clavell's driving privileges in New York had been suspended. Accordingly, Respondent placed Clavell under arrest and transported him to the 43rd Precinct.

Respondent arrived at the precinct at approximately 0130 hours, took Clavell to the desk officer, Sergeant Gerard DeCaro, and commenced the arrest processing procedure. The arrest screening process requires the Desk Officer to make a visual examination of the prisoner to determine whether or not he appears to be in need of medical attention but also requires the Desk Officer to inquire of the prisoner whether he or she would like medical attention. Sergeant DeCaro recorded his observations in a notation which appears in the Command Desk Log, a portion of which was entered into evidence at the trial. Upon completion of the Desk Officer's arrest screening process, Respondent took Clavell to the holding cell area. At about this time,

Clavell asked Respondent whether he could receive a Desk Appearance Ticket in lieu of being detained until arraignment. Respondent advised Clavell that he would look into his request.

After being detained for a period of time, Respondent spoke with Clavell and informed him that he would not be receiving a Desk Appearance Ticket. Under circumstances which are in dispute, Clavell declared that he wanted to go to the hospital. Clavell was never taken to a medical facility and was instead transported to Central Booking by Respondent in preparation for Criminal Court arraignment. Clavell was eventually released by the Court on his own recognizance.

What is in dispute in this case is whether Respondent properly discharged his obligation under Patrol Guide 210-04, which requires members of the service to obtain medical or psychological treatment for prisoners when required. CCRB took the position that Respondent did not notify a supervisor, as required by the Patrol Guide, but unilaterally determined that Clavell's request was frivolous. Respondent's position was that he notified a supervisor of Clavell's request, as was his duty, and was later advised that the decision had been made to deny Clavell's request.

The evidence presented by CCRB in support of the allegations was adduced from the testimonies of Radames Clavell and Sergeant Gerardo DeCaro. Based upon the credible evidence in the record, I find that Clavell's testimony was not reliable in several respects and contradicted by documentary evidence. Sergeant DeCaro's testimony was credible, but corroborated material aspects of Respondent's testimony.

Clavell is a two-time felon who claimed to be a diabetic, as well as a [REDACTED] (T. 13-14, 27-28, 37-38, 57). He testified that after he was placed in the 43rd Precinct holding cell, he noticed fecal matter on the floor which, in his opinion, compounded by a lack of nutrition

subsequent to his arrest, triggered a "[REDACTED]" episode (T. 18-19). Clavell claimed that he informed Respondent, as well as numerous other police officers, including a person identified by him as "Lieutenant Millet," that he needed to go to the hospital (T. 20-21, 45, 48, 50-52).

Clavell's credibility was undermined by several factors. First, he conceded on cross-examination that he was permitted to contact his wife after his arrest and she appeared at the 43rd Precinct to take custody of his truck. While Clavell stated that under normal circumstances he would test his glucose levels every three hours, he did not ask his wife to bring a glucose monitor with her when she came to take custody of his truck (T. 43-44, 64). Second, according to an offer of proof from CCRB, no member of the service named "Millet" was assigned to the 43rd Precinct at the time of the incident (T. 173). Finally, Clavell's two previous felony convictions and trial demeanor weigh against his veracity. Based upon the foregoing factors, I found him to be an unreliable witness.

Sergeant DeCaro testified credibly that he was the Desk Sergeant assigned to the 43rd Precinct during Respondent's tour of duty on February 22, 2013. DeCaro acknowledged that one of his roles as the Desk Sergeant was to conduct an assessment, to the best of his lay abilities, to discern whether a prisoner was in need of medical or psychological attention (T. 72-73). While DeCaro recognized Respondent, he acknowledged that he only saw him in passing (T. 78). DeCaro had no independent recollection of either speaking with Respondent or processing Clavell on the date in question but conceded the accuracy of an excerpt from the command desk log which memorialized the aforementioned processing in his own handwriting (T. 79-80). The excerpt from the Desk Log, admitted into evidence as CCRB Exhibit 1, contains an entry for Clavell's arrest processing which lists his "physical/medical condition" as "apparently normal"

(T. 80, 83-84). According to DeCaro, once a suspect is lodged in the precinct, the responsibility for obtaining medical treatment, if necessary, rests with a supervisor (T. 96; see P.G. 210-04{3}).

Respondent's testimony was clear, concise and logical. While Respondent is an interested party in this proceeding, the substance of his testimony, as well as his in-court demeanor, imbue his statements with the ring of truth. At the time of this incident, Respondent was a rookie police officer with approximately 13 months experience. Respondent testified that once he informed Clavell that he would not be able to receive a Desk Appearance Ticket, Clavell told him, "I can't get a DAT, then I need to go to the hospital" (T. 115). His forthrightness in admitting that Clavell made the request for medical treatment further supports a finding that Respondent was a credible witness.

At the time Clavell made this request, Respondent observed no indicia of medical or psychological distress, other than Clavell being aggravated that he would not receive a Desk Appearance Ticket (T. 116). Although he suspected immediately that Clavell was making a frivolous request, Respondent was unequivocal in his assertion that he passed the request to the Desk Officer (T. 117). Respondent testified further that the Desk Officer told him that the request would be handled, saying, in sum and substance, "We'll take care of it" (T. 118). A supervisor later informed Respondent that Clavell would not be going to the hospital, as it was not necessary (T. 119). Respondent could not recall whether the Desk Officer was actually Sergeant DeCaro or some other member of the service acting in his stead (Id.).

Respondent candidly admitted that he did not memorialize either Clavell's request, or the supervisor's denial of the request, in his activity log (T. 141-142). While the Patrol Guide requires a member of the service to make an activity log entry whenever a prisoner in custody

requires medical/psychological treatment, it is silent as to situations where a request is made and subsequently denied (P.G. 210-04[1][b]).

It is likely that Respondent, as a rookie police officer, would rely upon, and defer to, the judgment of supervisors in most matters of police procedure. Nevertheless, his testimony makes clear that he appreciated the importance of addressing Clavell's request, even though he was skeptical of its authenticity. Respondent's assertion that he was told by a supervisor that the matter would be taken care of is similarly likely. Finally, Respondent would have had no incentive to second-guess a supervisor telling him that the request had been evaluated and determined to be frivolous. That Respondent failed to document each step of the process is problematic, but not dispositive in this case. In that regard, his inability to recall precisely which supervisor informed him that Clavell's request had been evaluated and denied is understandable. As a rookie, Respondent's familiarity with supervisory personnel assigned to the 43rd Precinct at that time would be somewhat limited and would likely require a contemporaneous memorandum as an aid to memory. Respondent's declaration on cross-examination, that he did not seek to "cover" himself by reporting Clavell's request to a supervisor but did so because "that's what you're supposed to do," was credible and persuasive (T. 130).

The credible evidence in the record is insufficient to establish by a preponderance that Respondent committed the charged misconduct; accordingly, I find him Not Guilty of the sole charge and specification.

APPROVED

APR 15 2016
William J. Bratton
WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,

Paul M. Gamble
Paul M. Gamble
Assistant Deputy Commissioner Trials